

STATE OF VERMONT
FRANKLIN COUNTY, ss.

VERMONT DISTRICT COURT
DOCKET NO. 510-5-08 Frcr

STATE OF VERMONT

ENTERED

v.

AUG - 6 2009

DONALD BLODGETT

FRANKLIN DISTRICT
FAMILY COURT

DECISION AND ORDER

The Defendant is charged with one count of sexual assault on a child, allegedly occurring in 1989 or 1990, and one count allegedly occurring in 1990 or 1991. On March 19, 2009, about ten months after the information was filed, Defense Counsel filed a request for psychiatric examination pursuant to 13 V.S.A. § 4814(a)(2). Accordingly, on March 25, the Court ordered an examination. On April 14, the Court-appointed psychiatrist, Robert Linder, M.D., filed a report with the Court. On June 25, the Court conducted an evidentiary hearing during which both Dr. Linder and defense expert Philip Kinsler, Ph.D. testified.

Findings of Fact

Dr. Linder testified that he conducted a forensic examination of Defendant on April 2, for about 1.5 hours at the Franklin District Court. In the opinion of Dr. Linder, Defendant understood the function of the various trial participants, including defense counsel, prosecutor, judge and jury; understood the nature and the seriousness of the charges against him; and und was able to suggest possible defenses to the charges. He found no indication of delusions or mental illness. Although Dr. Linder did no formal testing, he estimated that Defendant's IQ was in the range of low borderline to low average (in the low 80s). Again without formal testing, he opined that Defendant's memory appeared to be adequate and that he was capable of assisting his attorney during trial. He opined that Defendant was competent to stand trial.

AUG 10 2009

Dr. Kinsler is a forensic psychologist. He examined Defendant for a total of 6.5 hours over a period of two days. He administered a battery of psychological tests including an IQ test and a memory test, the Wechsler Memory Scale (3rd edition), (described by Dr. Kinsler as the "gold standard."). Dr. Kinsler determined that Defendant's verbal IQ is 65, his non-verbal IQ is 71 and his composite IQ, 67. More importantly, Dr. Kinsler found severe deficits in Defendant's memory capability. The most significant results of Dr. Kinsler's testing were as follows:

auditory (listening) memory
visual memory
immediate memory
auditory delayed memory
visual delayed memory
general memory
working memory

1/10 of 1st percentile
2nd percentile
1/10 of 1st percentile
1st percentile
10th percentile
2nd percentile
4th percentile

Dr. Kinsler also determined that the malingering scale, built into the test, indicated that Defendant was not malingering.

As Dr. Kinsler explained, a trial is basically a "verbal event." In order to participate meaningfully in a trial, a defendant must have a working memory sufficient to retain testimony, to understand what the testimony means, to integrate the testimony with his memory of events, and to discuss these matters with his lawyer. Dr. Kinsler opined that, in view of Defendant's memory deficits, he will not be able to consult adequately with his lawyer during the trial.

The Court concludes that the Defendant is not competent to stand trial. "Competency to stand trial depends on whether the defendant 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him.'" *State v. Davis*, 165 Vt. 240, 247-48 (1996), quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). In the Court's opinion, the Defendant's capabilities do not satisfy the *Dusky* standard. It is self-evident that in

AUG 10 2009

light of Defendant's memory deficits, he does not have the capacity "to consult with his lawyer with a reasonable degree of rational understanding."

ORDER

Defendant is not competent to stand trial. The Court will assign a guardian-ad-litem for Defendant in this matter. The Clerk is directed to set this matter for status conference before scheduling the hospitalization hearing required by 13 V.S.A. §4820.

Dated at St. Albans, Vt., this 6th day of August, 2009,


Michael S. Kupersmith
District Judge

AUG 10 2009